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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/550,471	04/14/2000	TODD ALLEN BERG	VS-42	8796

1473 7590 04/24/2003

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 04/24/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/550,471

Applicant(s)

BERG ET AL. 

Examiner

Bruce E Snow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 9, 11-19, 21, 22, 26, 28, 31-50, 52 and 53 is/are pending in the application.
- 4a) Of the above claim(s) 2, 6, 8, 11-19, 21, 22, 26, 28, 31-44, 50 and 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 9, 45-49 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Election/Restrictions

This application contains claims 2, 6, 8, 11-19, 21-22, 26, 28, 31-44, 50, 52 drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Note that claims 21-22, 26, 28, 31-33 depend from cancelled claim 20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 9, 45-49, 53 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bessler et al (5,855,601).

Referring to all figures, specifically figure 7, Bessler et al teaches a heart valve apparatus comprising a uni-directional valve portion 22, 63; a connector band 32, 50, or 62; and a plurality of fingers 64 which "*are oriented substantially parallel to the direction of blood flow*". Bessler et al specifically names elements 64 as "barbs". However, it is unclear as to the elements being "barbed fingers". Given the fact that the specification teaches "barb", it would have been obvious to one having ordinary skill in the art to have

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utilized such a configuration ("well-know sense" configuration known in the art, see definition in applicant's arguments in Amdt B, paper No. 11, page 6) for better anchoring.

Regarding barbs, see column 4, line 12.

Regarding the gasket, see element 25.

Response to Arguments

Applicant's arguments filed 2/20/03 have been fully considered.

Applicant's deletion of claims 20, 23, 24, and 29 has effectively removed the rejections in view of Frantzen and Lazarus.

It is noted that the current application has priority to Provisional Patent Application No. 60/130,758, which inherently by applicant's response, contains support for the current claims. The rejection in view of Griffin has been withdrawn.

Applicant's arguments regarding the Bessler rejection are not persuasive. The 35 U.S.C. 102 portion of the rejection has been withdrawn. Regarding the 35 U.S.C. 103 ~~portion, it would have been obvious to one skilled in the art of intraluminal prosthetics to have used "barbed fingers" as an anchoring configuration,~~ It is noted that Lazarus (U.S. Patent No. 6,416,535) which was applied in the previous Office action to reject the sub-combination of just the connector band (claim 20), taught such a configuration is known in the art; see figure 11. The use of a "barbed finger" configuration would have been obvious to provide better anchoring of the device preventing withdrawal. Applicant argues that Bessler et al teaches away from a "barbed finger" configuration because the

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references uses both upstream and downstream anchoring means. This is not persuasive. The blood stream produces both upstream and downstream directed forces on an intraluminal device; both anchoring means provides securement against both forces, both could be barbed. Note that applicant's figure 5 teaches an upstream and downstream anchoring configuration.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

bes
April 22, 2003



BRUCE SNOW
PRIMARY EXAMINER